

HONORABLE RICHARD A. JONES

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

3M COMPANY,  
Plaintiff,  
vs.  
AIME LLC, MARK BACIAK, AND  
MICHAEL BINGHAM,  
Defendants.

CASE NO. 2:20-cv-01096-RAJ  
**AIME LLC, MARK BACIAK,  
AND MICHAEL BINGHAM'S  
ANSWER AND AFFIRMATIVE  
DEFENSES**

**ANSWER**

The Defendants AIME LLC, MARK BACIAK, AND MICHAEL BINGHAM hereby answer the correspondingly numbered paragraphs of the Complaint filed in this action, and state as follows:

1. Denied.
2. Denied.
3. Denied.
4. Denied.
5. Denied.
6. Denied.

1 7. Denied.

2 8. Denied.

3 **BACKGROUND**

4 9. Without knowledge and therefore denied.

5 10. Admitted that healthcare professionals and other first responders are heroically placing  
6 their health and safety on the line to battle COVID-19. Otherwise, without knowledge and  
7 therefore denied.

8 11. Admitted the demand for respirators of any origin has grown exponentially in response to  
9 the pandemic, and that 3M has been committed to seeking to maintain its monopoly and still  
10 meet this demand for its own selfish profit motives. Denied that 3M is trying to keep its  
11 respirators priced fairly.

12 12. Admitted that certain bad actors have attempted to exploit the crisis and engage in such  
13 scams during the pandemic. Denied that Defendants have been involved in any such scams.  
14 Otherwise, denied.

15 13. Without knowledge, and therefore denied.

16 14. Without knowledge, and therefore denied.

17 15. Without knowledge, and therefore denied.

18 16. Without knowledge, and therefore denied.

19 17. Without knowledge of 3M's efforts to combat fraud, its stance, and its commitments.  
20 Otherwise, denied.

21 18. Without knowledge of 3M's motives for filing the lawsuit. Otherwise, denied.

22 **THE PARTIES**

23 19. Admitted 3M has a global presence and is among the leading manufacturers of such PPE.  
24 Otherwise, without knowledge and therefore denied.

25 20. Admitted that AIME was such a company. Admitted that AIME uses the domain name  
26 <http://aimeusa.com/>. To the extent Plaintiff accurately cites to the website, Plaintiff's quotes

therefrom are admitted. Admitted AIME was formed on February 5, 2020, that it registered its internet domain name on March 19, 2020, and that AIME is not one of 3M's authorized distributors. Otherwise, without knowledge and therefore denied.

21. Admitted.

22. Denied.

23. Denied.

### **JURISDICION AND VENUE**

24. Admitted.

25. Admitted.

26. Admitted.

27. Admitted this Court has personal jurisdiction over Defendants. Otherwise, denied.

28. Admitted that venue is proper in this District and that at least one of the Defendants reside in this district. Otherwise, denied.

### **FACTS COMMON TO ALL CLAIMS FOR RELIEF**

29. Without knowledge, and therefore denied.

30. Without knowledge, and therefore denied.

31. Without knowledge, and therefore denied.

32. Without knowledge, and therefore denied.

33. Without knowledge, and therefore denied.

34. Without knowledge, and therefore denied.

35. Without knowledge, and therefore denied.

36. Without knowledge, and therefore denied.

37. Without knowledge, and therefore denied.

38. Without knowledge, and therefore denied.

39. Without knowledge, and therefore denied.

#### ***i. 3M's Extensive Efforts to Assist with the Battle Against COVID-19***

1 40. Admitted as to the first sentence. Denied as to the second sentence.

2 41. Admitted.

3 42. Admitted.

4 43. Admitted.

5 44. Admitted as to the first sentence. Denied as to the second sentence.

6 45. Without knowledge, and therefore denied.

7 46. Without knowledge, and therefore denied.

8 **A. COVID-19 Facts**

9 47. Admitted.

10 48. Admitted.

11 49. Admitted.

12 50. Admitted.

13 51. Admitted.

14 52. Without knowledge, and therefore denied.

15 **B. Defendants' Unlawful Conduct**

16 53. Admitted.

17 54. Admitted.

18 55. Denied.

19 56. Without knowledge, and therefore denied.

20 57. Admitted.

21 58. Denied.

22 59. Denied.

23 60. Denied.

24 61. Denied.

25 62. Denied.

26 63. Denied.

1 64. Denied.

2 65. Denied.

3 66. Denied.

4 67. Denied.

5 68. Denied.

6 69. Denied.

7 70. Denied.

8 71. Denied.

9 72. Denied.

10 73. Denied.

11 74. Denied.

12 75. Denied.

13 76. Without knowledge, and therefore denied.

14 77. Without knowledge, and therefore denied.

15 **FIRST CLAIM FOR RELIEF**

16 **(Unfair Competition, False Endorsement, False Association, and False Designation of**  
17 **Origin Under Section 43(a)(1)(A) of the Lanham Act, 15 U.S.C. § 1125(a)(1)(A))**

18 78. Defendants re-allege and incorporate herein by reference the allegations in paragraphs 1  
19 through 77 above as through fully set forth herein.

20 79. Denied.

21 80. Denied.

22 81. Denied.

23 82. Denied.

24 83. Denied.

25 **SECOND CLAIM FOR RELIEF**

26 **(Trademark Dilution Under Section 43(c) of the Lanham Act)**

84. Defendants re-allege and incorporate herein by reference the allegations in paragraphs 1  
through 77 above as through fully set forth herein.

1 85. Denied.

2 86. Denied.

3 87. Denied.

4 88. Denied.

5 89. Denied.

6 90. Denied.

7 91. Denied.

8 **THIRD CLAIM FOR RELIEF**  
9 **(False Advertising Under Section 43(a)(1)(B) of the**  
10 **Lanham Act, 15U.S.C. §1125(a)(1)(B))**

11 92. Defendants re-allege and incorporate herein by reference the allegations in paragraphs 1  
12 through 77 above as through fully set forth herein.

13 93. Denied.

14 94. Denied.

15 95. Denied.

16 96. Denied.

17 97. Denied.

18 98. Denied.

19 99. Denied.

20 100. Denied.

21 101. Denied.

22 **FOURTH CLAIM FOR RELIEF**  
23 **(Trademark infringement; RCW 19.77.150 -.160)**

24 102. Defendants re-allege and incorporate herein by reference the allegations in  
25 paragraphs 1 through 77 above as through fully set forth herein.

26 103. Denied.

104. Denied.

1 **FIFTH CLAIM FOR RELIEF**  
2 **(Violation of Washington Unfair Business Practices Act, RCW § 19.86 et seq.)**

3 105. Defendants re-allege and incorporate herein by reference the allegations in  
4 paragraphs 1 through 77 above as through fully set forth herein.

5 106. Denied.

6 107. Denied.

7 108. Denied.

8 109. Denied.

9 110. Denied.

10 111. Denied.

11 112. Denied.

12 113. Denied.

13  
14 **SIXTH CLAIM FOR RELIEF**  
15 **(Conspiracy)**

16 114. Defendants re-allege and incorporate herein by reference the allegations in  
17 paragraphs 1 through 77 above as through fully set forth herein.

18 115. Denied.

19 116. Denied.

20 117. Denied.

21 118. Denied.

22 119. Denied.

23 120. Denied.

24 These Defendants deny that 3M is entitled to any relief against them as sought in 3M's  
25 prayer for relief.

1                                   **AFFIRMATIVE DEFENSES**

2                                   **FIRST AFFIRMATIVE DEFENSE**  
3                                   **(Failure to State a Claim)**

4           121.       The Complaint, on one or more counts set forth therein, fails to state a claim upon  
5           which relief can be granted.

6                                   **SECOND AFFIRMATIVE DEFENSE**  
7                                   **(Fair Use)**

8           122.       The claims made in the Complaint are barred, in whole or in part, by the  
9           doctrines of fair use, nominative fair use and/or descriptive use.

10                                  **THIRD AFFIRMATIVE DEFENSE**  
11                                  **(First Sale Doctrine)**

12           123.       The claims made in the Complaint are barred, in whole or in part, by the first sale  
13           doctrine.

14                                  **FOURTH AFFIRMATIVE DEFENSE**  
15                                  **(Functionality)**

16           124.       The claims made in the Complaint are barred, in whole or in part, on the basis that  
17           any marks at issue are functional.

18                                  **FIFTH AFFIRMATIVE DEFENSE**  
19                                  **(Innocent Infringement)**

20           125.       The claims made in the Complaint are barred, in whole or in part, because any  
21           infringement, if any, was innocent.

22                                  **SIXTH AFFIRMATIVE DEFENSE**  
23                                  **(Waiver, Acquiescence, and Estoppel)**

24           126.       Each of the purported claims set forth in this Complaint is barred by the doctrines  
25           of waiver, acquiescence, and estoppel.

26                                  **SEVENTH AFFIRMATIVE DEFENSE**  
27                                  **(Non-Infringement)**

28           127.       Defendant has not infringed any applicable trademarks under federal or state law.

29                                  **EIGHTH AFFIRMATIVE DEFENSE**  
30                                  **(No Causation)**



1 128. Plaintiff's claims against Defendants are barred because Plaintiff's damages, if  
2 any, were not caused by Defendants.

3 **NINTH AFFIRMATIVE DEFENSE**  
4 **(No Damage)**

5 129. Without admitting that the Complaint states a claim, there has been no damage in  
6 any amount, manner or at all by reason of any act alleged against Defendant in the Complaint,  
7 and the relief prayed for in the Complaint therefore cannot be granted.

8 **TENTH AFFIRMATIVE DEFENSE**  
9 **(Unclean Hands)**

10 130. Plaintiff's claims are barred by the doctrine of unclean hands.

11 **ELEVENTH AFFIRMATIVE DEFENSE**  
12 **(Lack of Irreparable Harm)**

13 131. Plaintiff's claims for injunctive relief are barred because Plaintiff cannot show  
14 that it will suffer any irreparable harm from Defendants's actions.

15 **TWELFTH AFFIRMATIVE DEFENSE**  
16 **(Adequacy of Remedy at Law)**

17 132. The alleged injury or damage suffered by Plaintiff, if any, would be adequately  
18 compensated by damages. Accordingly, Plaintiff has a complete and adequate remedy at law and  
19 is not entitled to seek equitable relief.

20 **THIRTEENTH AFFIRMATIVE DEFENSE**  
21 **(Failure to Mitigate)**

22 133. The claims made in the Complaint are barred, in whole or in part, because of a  
23 failure to mitigate damages, if such damages exist.  
24  
25  
26

**FOURTEENTH AFFIRMATIVE DEFENSE**  
**(First Amendment)**

134. The claims made in the Complaint are barred, in whole or in part, by the First Amendment to the Constitution of the United States.

**FIFTEENTH AFFIRMATIVE DEFENSE**  
**(Duplicative Claims)**

135. Without admitting that the Complaint states a claim, any remedies are limited to the extent that there is sought an overlapping or duplicative recovery pursuant to the various claims for any alleged single wrong.

**SIXTEENTH AFFIRMATIVE DEFENSE**  
**(Third-Party Use)**

136. The claims made in the Complaint are barred, in whole or in part, by reason of other parties' use of any marks at issue.

**SEVENTEENTH AFFIRMATIVE DEFENSE**  
**(Actions of Others)**

137. The claims made in the Complaint are barred, in whole or in part, because Defendants are not liable for the acts of others over whom they have no control.

**ADDITIONAL DEFENSES**

138. Defendants reserve the right to assert additional defenses based on information learned or obtained during discovery.

**COUNTERCLAIM**

Defendants/Counter Plaintiffs, AIME LLC, Mark Baciak, and Michael Bingham hereby adopt and incorporate herein by reference the entirety of the Counterclaim that is being filed separately and commensurately herewith for ease of reference.

1 Dated this 9<sup>th</sup> day of October, 2020

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20  
21 Attorney for Defendants AIME, LLC,  
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23  
24  
25  
26

**CERTIFICATE OF SERVICE**

I hereby certify that on October 9, 2020, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all parties of record at the email address identified in the same.

By s/ Richard D. Ross  
Counsel for Defendants